



2009-047

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable William R. Justice  
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Water Boards - Civil Service System -  
Public Corporations - Municipalities -  
Employees, Employers, Employment

The Alabaster Water Board ("Water Board") and its employees are not subject to the Alabaster Civil Service System established by Act 93-493. The Water Board may adopt the system for its employees, but the personnel board is not authorized to contract with the Water Board to administer the system.

Dear Mr. Justice:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabaster Water Board.

QUESTIONS

(1) Does Act 93-493, which created a civil service system for the City of Alabaster, apply to the Alabaster Water Board?

(2) If so, may the Water Board provide a cost-of-living increase, disability benefits, and a severance package separate from any such provision made by the city to its employees?

(3) If not, may the Water Board adopt the system for its employees and contract with the personnel board to administer it?

FACTS AND ANALYSIS

Your request states that the Alabaster Water Board is incorporated as a public corporation pursuant to section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE § 11-50-310 to 11-50-324 (1992 & Supp. 2008).

You ask this Office to reconsider our line of opinions addressing Act 93-493 and the Water Board. Opinions to Honorable Michael G. Graffeo, General Counsel, Alabaster Water Board, dated June 16, 2000, A.G. No. 2000-167; Honorable Dennis Rother, Chairman, Alabaster Water Board, dated July 7, 1995, A.G. No. 95-00253; and to Honorable Catherine C. Sarris, City Clerk-Treasurer, City of Alabaster, dated August 20, 1993, A.G. No. 93-00307.

The *Graffeo* opinion explained as follows:

Act No. 93-493 of the 1993 Regular Legislative Session (H.B. 742) created a civil service system for the City of Alabaster. 1993 Ala. Acts No. 93-493, 789. Act No. 93-358 of the 1993 Regular Legislative Session (S.B. 519) is an identical bill, except it originated in the Senate, whereas Act No. 93-493 originated in the House of Representatives. 1993 Ala. Acts No. 93-358, 555. . . .

*Graffeo* at 1-2.

The *Sarris* opinion concluded that the Personnel Director of the Alabaster Civil Service System had authority over the Water and Gas Board in addition to the city and the Library Board. This Office understands that the Water and Gas Board operated both gas and water systems at the time of the enactment of the act but has since amended its certificate of incorporation to limit its authority to the water system.

The *Rother* opinion concluded that the Water Board could provide insurance benefits to retiring employees independent of the city or Personnel Board. Most recently, the *Graffeo* opinion concluded that the act did not authorize a pay plan for employees of the Water Board separate from the plan for city employees.

Section 2(1) of the act defines "appointing authority" as follows:

[A] person, officer, board, council, or other body whose jurisdiction or powers are confined wholly or primarily within the territorial limits of the city and who or which possess final power to appoint persons to

services, jobs, offices, or positions, the compensation of which is paid in whole or in part from public funds of the city subject to this act. The mayor and city department heads, the *water and gas board and its manager*, and the library board and its head librarian *are appointing authorities within the meaning of this definition.*

1993 Ala. Acts No. 93-493, 789 (emphasis added). The plain language of the act makes the Water Board an entity covered by the civil service system.

The first opinion at issue, the *Sarris* opinion, assumed the act applied to the Water Board without considering how the Water Board was created. The *Rother* opinion simply relied on the plain language, specifically stating that “[t]he employees of the Alabaster Water Board are subject to the civil service system.” *Id.* at 2. Most recently, the *Graffeo* opinion, while also relying on the plain language, cast doubt on it, ending with the following:

The question arises as to whether Act No. 93-493 can validly apply to the Alabaster Water Board. Your request states that the Alabaster Water Board was established pursuant to section 11-50-310 through 11-50-324 of the Code of Alabama. ALA. CODE § 11-50-310 to 11-50-324 (1992, Supp. 1999). It is well established that water and sewer boards established under these statutory provisions are public corporations, entities separate and independent from the city that they serve. *Water Works Board of the City of Leeds v. Huffstutler*, 292 Ala. 669, 676, 299 So. 2d 268, 276 (1974). A city can lawfully exercise only that power over such corporation as is conferred on the city by charter of the corporation or the general laws of the state under which the corporation was organized. *Id.* at 676, 276. *Employees of separately incorporated utility boards are considered employees of the board[s], separate and distinct from employees of the city.* Opinion of the Attorney General to The Water Works Board of the Town of Sardis City, dated January 7, 1982, A.G. No. 82-00138.

*Graffeo* at 2-3 (emphasis added).

The Legislature has since codified this principle when it enacted section 11-40-24 of the Code of Alabama, which specifically provides that, “[n]otwithstanding any other provision of law, employees of any separately

incorporated public corporation authorized to be created by a municipality pursuant to state law are employees of that separately incorporated entity and are not employees of the municipality authorizing the creation of the entity." ALA. CODE § 11-40-24 (2008).

Moreover, you correctly point out that the definition above is the only place in the act in which the Water Board is specifically mentioned, although the city is repeatedly referred to throughout the act in relation to employees. In fact, the legislative purpose of the act is unequivocally stated in section 3, the very next section after the definitional section at the beginning, "to provide for the orderly administration of *city government*." 1993 Ala. Acts No. 93-493, 792 (emphasis added). Another example is section 6, which categorizes the classified service as "all employees and appointees holding regular full-time positions in the *service of the city*." *Id.* at 795 (emphasis added). Section 24(2) provides for the procedures to respond to discovery requests "directed to an officer or *employee of the city*." *Id.* at 817 (emphasis added). Provisions in section 39(a)(1)(c) through (e) guarantee persons "in the *employment of the city*" the right to participate in political activities. *Id.* at 833 (emphasis added).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). A literal interpretation of a statute that would defeat the purpose of the statute should not be adopted if another reasonable interpretation can be given to it. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951). Courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001).

The more reasonable construction is that the Legislature did not intend the Water Board to be covered by the civil service system because the Water Board is a legal entity separate from the city, and its employees are not municipal employees. Thus, the act is not applicable to the Water Board. The *Graffeo* and *Sarris* opinions are overruled to the extent that they conflict with this opinion. In light of the answer to your first question, the answer to your second question is moot.

Regarding your third question, no provision of the act authorizes the personnel board to administer the system for nonmunicipal entities by contract. Therefore, although the Water Board may adopt the system for its employees, because the authority of the personnel board is limited to municipal employees, the personnel board may not contract with the Water Board to administer the system.

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CONCLUSION

The Alabaster Water Board and its employees are not subject to the Alabaster Civil Service System established by Act 93-493. The Water Board may adopt the system for its employees, but the personnel board is not authorized to contract with the Water Board to administer the system.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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